

**FILED**

April 20, 2006

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

nunc pro tunc  
February 9, 2005

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS

---

In the Matter of:

KENNETH H. CHEN, M.D.  
a/k/a KUEN H. CHEN, M.D.  
License No. MA30252

ORDER REVOKING  
LICENSURE

---

This matter was initially opened before the Board on May 19, 2004, upon the filing of a Verified Complaint seeking the suspension or revocation of the license of respondent Kenneth H. Chen, M.D. to practice medicine and surgery in the State of New Jersey. Within the complaint, the Attorney General alleged that respondent had repeatedly violated the terms of a prior Consent Order that he entered with the Board on May 27, 2003, wherein he had agreed to cease and desist from prescribing or dispensing Buprenex for the treatment of narcotic addiction. Specifically, respondent was charged with having prescribed Buprenex to undercover investigators on five specific occasions. On each occasion, it was further alleged that respondent prescribed Buprenex either after conducting only a cursory physical examination or no physical examination whatsoever, and that respondent created false and misleading patient records which "documented" non-existent symptoms and included false diagnoses. Respondent was additionally charged, in a sixth count, with having

**CERTIFIED TRUE COPY**

improperly attempted to alter a medical record after having been served with a subpoena demanding the production of said record.

Following the filing of the Verified Complaint, Dr. Chen agreed to the entry of an Order temporarily suspending his medical license on June 11, 2004.<sup>1</sup> The Order of Temporary Suspension specifically provided that respondent was to file an Answer to the charges in the Verified complaint within thirty days.

Notwithstanding his explicit agreement to do so, respondent did not thereafter file any answer to the verified complaint, nor participate in any manner in any proceedings before the Board or the Office of Administrative Law. On January 18, 2005, the Attorney General filed a Motion seeking the entry of an Order granting a Default Judgment against respondent for failure to plead or otherwise defend. Following a hearing held on February 9, 2005, we granted the Attorney General's motion for default, and ordered the revocation of respondent's license to practice medicine in New Jersey, and the assessment of \$120,000 in penalties, \$13,380.41 in investigative costs and \$15,912.50 in attorneys'

---

<sup>1</sup> Dr. Chen initially agreed to cease and desist from practicing medicine on May 25, 2004 pending a hearing on the Attorney General's application for the temporary suspension of his license. He thereafter agreed to the entry of an Order effecting the temporary suspension of his license pending a plenary hearing at the Office of Administrative Law and final Board review of any Initial Decision entered following the contemplated administrative hearing.

fees. We set forth below the findings of fact and conclusions of law which we made, and the basis for the penalty that we ordered.<sup>2</sup>

#### *Entry of Default*

On February 9, 2005, we held a hearing upon the Attorney General's motion for a Default Judgment. Deputy Attorney General Hakima Bey appeared before the Board in support of the motion. Respondent did not appear at said proceeding, nor did any attorney appear on behalf of respondent. The Board was presented with proofs that the Notice of Motion for Default (which included specific notice of the scheduling of the February 9, 2005 hearing) had been served upon respondent.<sup>3</sup>

---

<sup>2</sup> We note that the penalty assessments which were ordered in this case were announced in public session on February 9, 2005, and were fully effective that date. It was recently brought to our attention that no written Order memorializing the determinations which we made was filed subsequent to that hearing, and we thus are now filing a written Order that fully sets forth the basis for our action. Given that the revocation of respondent's license was effective on February 9, 2005, our order will be entered *nunc pro tunc*. Nonetheless, because no written order was entered following the announcement of our decision on the record, we will afford respondent an additional ten days from the date of entry of this Order to satisfy the financial obligations which we imposed. In the event respondent fails to satisfy those obligations in full within ten days (or make other arrangements to satisfy the obligations acceptable to the Board), a Certificate of Debt shall be filed with the Superior Court in accordance with N.J.S.A. 45:1-24.

<sup>3</sup> The proof of service was set forth in a certification of Deputy Attorney General Bey dated January 13, 2005. Therein, D.A.G. Bey certified that copies of the Notice of Motion for Default and accompanying documents had been sent by First Class Regular Mail and by Certified Mail, return receipt requested to both Dr. Chen's business address, 244 Broadway, Newark, New Jersey and his residential address, 51 Warren Road, West Orange, New

We find that, notwithstanding the express terms of the June 11, 2004 Consent Order, which respondent personally signed (thereby evincing his awareness that he needed to file an Answer to the Verified Complaint), respondent did not and has not filed an Answer to the charges of the Verified Complaint. Further, it is clear that respondent has not, since agreeing to the temporary suspension of his license, participated in any manner in the proceedings in this matter. Respondent has elected not to present any defense to the motion made for entry of a Default Judgment. Respondent's failure to participate in this matter clearly demonstrates an abandonment on his part of any defense of this case. Accordingly, we unanimously conclude that cause exists to enter a Default Judgment against respondent and proceed to consider the substantive allegations of the complaint, and evidence supporting said allegations, in respondent's absence.

#### *Findings of Fact*

Following our decision to enter a Default Judgment in this matter, the Attorney General sought to prove the substantive allegations within the Administrative Complaint by entering documents (to include affidavits of each of the undercover investigators and copies of the patient records that respondent prepared for each of the undercover investigators) into evidence. A complete list of the documents which were moved into evidence,

---

Jersey.

portions of which we cite below, is set forth in the Appendix to this Order. Upon review of the documents in evidence, we conclude that the Attorney General has proven all of the allegations made within the Verified Complaint.

It is thus clear that, on May 27, 2003, respondent entered into a Consent Order with the Board wherein he agreed to cease and desist from all use of Buprenex -- whether by prescribing, dispensing or by any other means -- in the treatment of narcotic addiction. Respondent also agreed to refrain from prescribing, dispensing or by any means using any form of Buprenorphine unless and until such time as he was granted a waiver by the FDA and the Board approved his use of these medications. P-  
2. The Consent Order recited that Dr. Chen had admitted (when testifying before a Committee of the Board on March 26, 2003) that he had prescribed injectable Buprenex to opioid addicted patients in his private medical office, and included Board findings that the use of Buprenex for the treatment of opioid addiction was prohibited by federal law. Id. Notwithstanding Dr. Chen's specific agreement to discontinue the use of Buprenex in his practice, it is clear that Dr. Chen continued to prescribe Buprenex to patients, and did so in a cavalier manner, by simply writing

prescriptions for Buprenex without engaging in any meaningful medical examination before prescribing.<sup>4</sup>

In this case, a window into respondent's practice was opened by way of the affidavits that were prepared by each of the four undercover investigators who visited respondent's office in a covert capacity in April and May, 2004. Each of the investigators, who posed either as heroin addicts in need of treatment or, in one case, as the father of a son who was claimed to be a heroin addict, were able to obtain prescriptions for Buprenex from Dr. Chen, in exchange for \$50 or \$100 cash payments. The affidavits detail that, in each case, Dr. Chen did not perform any type of meaningful physical examination prior to issuing prescriptions, and the evidence further demonstrates that, in each case, respondent listed a fictitious diagnosis in the patient records which he prepared. Specific findings regarding each investigator who visited respondent's office in a covert capacity (listed according to the alias used by each undercover investigator) are set forth below:

a. "Cecilia Miraldo" (Counts 1 and 5) -- On April 23, 2004, Enforcement Bureau Investigator Cecilia Dominguez went to Dr. Chen's office in a covert capacity, using the alias "Cecilia Miraldo." P-13, ¶4. She initially completed a medical history

---

<sup>4</sup> Respondent did not obtain certification from the Department of Health and Human Services to dispense or prescribe Buprenorphine products for the maintenance or detoxification treatment of opioid dependence. P-12.

questionnaire handed to her by respondent's receptionist, and then told the receptionist that she wanted to see Dr. Chen because she had a problem with heroin. Id., ¶5, 6. After taking Investigator Dominguez' blood pressure, conducting a cursory physical examination and asking her a series of questions concerning her health, Dr. Chen wrote Investigator Dominguez a prescription for two boxes (ten ampules) of Buprenex, and directed her to inject the medication in her shoulder area twice a day. Id., ¶7-10. Respondent also gave Investigator Dominguez a prescription for ten disposable syringes, and charged her \$100 for the visit. Id., ¶10.

Investigator Dominguez next went to respondent's office on May 4, 2004, again using the alias "Cecilia Miraldo." P-21, ¶3,4. On that visit, she told the receptionist that she was there for a "refill" and did not have much time to wait. Id., ¶4. The receptionist asked Investigator Dominguez how many boxes [of Buprenex] she needed, and Investigator Dominguez responded that she wanted two boxes. Id. The receptionist told Investigator Dominguez that it would be \$100 for the prescriptions, and collected \$100 from Investigator Dominguez. Id. The receptionist then entered an adjacent room and came out a few seconds later and stated that "the doctor is writing your prescription." Id., ¶4,5. The receptionist obtained a prescription for Buprenex and a second prescription for syringes, which she in turn gave to Investigator Dominguez (the prescriptions were written in handwriting and

wording that resembled the prescriptions written by Dr. Chen on April 23, 2004). Id., ¶5. On the May 4, 2004 visit, Investigator Dominguez was neither examined nor even seen by Dr. Chen, but rather remained standing the entire time at the reception area window until the prescription purchase was completed. Id., ¶6. Review of the patient record that Dr. Chen prepared for "Cecilia Miraldo" discloses that respondent falsely documented in the treatment record that the patient complained of back pain, and falsely documented a diagnosis of "lumbargo." P-14.<sup>5</sup>

b) "Heather Moore" (Count 2) -- On April 28, 2004, Investigator Heather Ollendorf visited Dr. Chen's office in a covert capacity, using the fictitious name "Heather Moore." P-15, ¶3. As was the case with Investigator Dominguez, Investigator Ollendorf was initially asked to complete a medical questionnaire, and then advised Dr. Chen's receptionist that she wanted to see Dr. Chen because she had a problem with snorting and smoking heroin. Id., ¶3,5. Investigator Ollendorf was seen by Dr. Chen, who asked her a series of questions about her heroin use and general health, conducted a cursory physical examination and then wrote two prescriptions (one for Buprenex and a second for syringes) in exchange for a \$100 cash payment. Id., ¶6, 7, 8. The patient record that Dr. Chen prepared for "Heather Moore" includes a false

---

<sup>5</sup> Investigator Dominguez states in her affidavit that she specifically told respondent that she did not have back pain and that she denied having headaches or any other pain. P-13, ¶7.



notation that the patient complained of back pain and a false diagnosis of "lumbargo." P-16.

c) "Derrek Watson" (Count 3) -- On April 30, 2004, Investigator Derrick Whitfield visited Dr. Chen's office in a covert capacity, using the fictitious name "Derrek Watson." P-17, ¶3. Investigator Whitfield was initially asked by Dr. Chen to complete a medical history questionnaire, and then told the receptionist that he wanted to see Dr. Chen because he was a heroin addict. Id., ¶5, 6. When seen by Dr. Chen, Investigator Whitfield told Dr. Chen that he was there because he wanted to stop using heroin. Id., ¶7. Dr. Chen asked Investigator Whitfield some perfunctory questions about his health and family history, but did not conduct any physical examination whatsoever of Investigator Whitfield. Id., ¶7, 8. Following the brief questioning, Dr. Chen provided Investigator Whitfield with prescriptions for Buprenex, Disposable Syringes and Clonidine, advised Investigator Whitfield that he "need[ed] to go to AA" and "to loose (sic) some weight," and charged Investigator Whitfield \$50 cash for the visit. Id., ¶9, 10. The patient record that Dr. Chen maintained for "Derrek Watson" falsely documents that Dr. Chen conducted a physical examination, falsely states that the patient complained of back pain and includes a false diagnosis of "lumbargo." P-18.

d) "Joe Padilla" (Count 4) -- A fourth undercover visit was conducted by Investigator Joesph Trogani, using the fictitious

name "Joe Padilla", on May 4, 2004. P-19, ¶5. Investigator Trogani claimed to be a father with a son who was addicted to heroin, and requested that Dr. Chen write prescriptions for his son (Investigator Trogani first telephoned Dr. Chen on May 3, 2004, and then told him that he wanted to see Dr. Chen to discuss a problem concerning his son who was addicted to heroin). Id., ¶2, 3, 7. Although Dr. Chen stated that he would not write a prescription for Mr. Padilla's "son" unless the son came into the office, he then agreed to write a prescription for "Joe Padilla." Dr. Chen told Investigator Trogani that "what you do with [the prescription] is between you and your son." Id., ¶7, 8. Dr. Chen then had Investigator Trogani fill out a medical questionnaire, and after taking Investigator Trogani's blood pressure and asking Investigator Trogani questions about his son's use of heroin, wrote prescriptions for "Joe Padilla" for Buprenex, syringes and Clonidine. Id., ¶ 9, 10, 11, 12. Dr. Chen charged \$100 for the visit. Id., ¶12. Dr. Chen additionally created a medical chart for "Joe Padilla" and falsely diagnosed the "patient" with "lumbargo" (notwithstanding his explicit knowledge that the sole purpose of the visit was to obtain a prescription for another individual). P-20.<sup>6</sup>

---

<sup>6</sup> We additionally take note that the evidence before us suggests that Dr. Chen prescribed Buprenex to other patients on a routine basis. Investigator Whitfield thus observed Dr. Chen give prescriptions to four individuals in exchange for cash payments. In each instance, Dr. Chen was observed to ask each individual how

Finally, we find the charges in Count 6 of the complaint that Dr. Chen improperly attempted to alter the patient chart he had created for "Joe Padilla" to be convincingly supported by the evidence submitted. Investigator Charles Harris thus details in his affidavit that he visited Dr. Chen's office on May 11, 2004, and then served a subpoena upon Dr. Chen seeking production of the patient records Dr. Chen maintained for each of the four undercover investigators. P-23. Investigator Harris states in his affidavit that, "during our review of the medical record of Joe Padilla, Dr. Chen began to write, in blue ink, in the physical examination portion of the (Padilla) record. The remaining (original) portion of the record is in black ink." Id., ¶6. Dr. Chen stopped writing on the chart when directed not to do so by Investigator Harris. Id.

#### *Conclusions of Law*

The factual findings we make fully support the charges in the Verified Complaint. We thus find the following violations of regulations and statutes, all of which provide independent bases for the imposition of disciplinary sanction against respondent:

---

much medication they needed and whether they needed syringes, and in each case Dr. Chen performed no medical examination. P-17, ¶4. Similarly, Investigator Trogani witnessed Dr. Chen write a prescription after a white male explained to Dr. Chen that he needed more Buprenex (the individual asked for "four" and for more needles), in exchange for a \$200 cash payment. P-19, ¶6.

-- violations of N.J.S.A. 45:1-21 (b) (engaging in the use or employment of dishonesty, fraud, deception and misrepresentation); Counts I, II, III, IV, V and VI.

-- violations of N.J.S.A. 45:1-21(c) (engaging in gross negligence, gross malpractice or gross incompetence); Counts III, IV and V.

-- violations of N.J.S.A. 45:1-21(d) (engaging in repeated acts of negligence, malpractice or incompetence); Counts IV and V.

-- violations of N.J.A.C. 13:35-6.5 (failure to maintain accurate and contemporaneous treatment records); Counts I, II, III, IV, V and VI.

-- violations of N.J.A.C. 13:45C-1.4 (failure to comply with a prior Order of the Board; Counts I, II, III, IV and V.

-- violations of N.J.S.A. 45:1-21(e) (engaging in professional misconduct); Counts I, II, III, IV, V and VI.

-- violations of N.J.S.A. 45:1-21(h) (failure to comply with the provisions of any act or regulation administered by the Board); Counts I, II, III, IV, V and VI.

Finally, we conclude that respondent's acts collectively support a determination that respondent lacks good moral character,

which is a continuing requirement for medical licensure pursuant to N.J.S.A. 45:9-6.

#### *Penalty*

We unanimously conclude that the record before us in this case conclusively and convincingly forms a predicate to support the entry of an Order revoking respondent's license, assessing maximum statutory penalties and assessing all costs of investigation and prosecution of this matter. Respondent has engaged in conduct which evinces an egregious and contumacious flaunting of the authority of this Board. As set forth above, respondent continued to prescribe Buprenex to patients after explicitly representing to the Board, in a public Order, that he would cease and desist from prescribing Buprenex in all cases.

Further, the evidence before us demonstrates not only Dr. Chen's flagrant disregard for the agreement he made with this Board, but also demonstrates a similarly flagrant disregard for the tenets of basic and sound medical practice. It is thus the case that, on each of the undercover visits, Dr. Chen either failed to perform any physical examination whatsoever (investigators Whitfield and Padilla) or performed cursory physical examinations (investigators Dominguez and Ollendorf), unacceptable under any standard of care, before writing prescriptions for Buprenex. Pared to its essence, Dr. Chen's "prescribing" constituted nothing more than the sale of prescriptions for cash. The medical records he

maintained were a sham, as each record included notations of non-existent physical symptoms and false diagnoses.

Dr. Chen's actions evince a striking contempt of this Board's authority, and demonstrate that his medical license was used only to facilitate his sale of prescriptions for cash. He acted in a crass manner similar to that of a street level drug pusher. We are unanimously of the opinion that the only sanction that could adequately protect the public in this case is the ordering of the revocation of Dr. Chen's license.<sup>7</sup>

---

<sup>7</sup> While we would unhesitatingly conclude that cause for the revocation of respondent's license exists based on the conduct that we have found he engaged in herein, we note that our decision that cause exists to currently revoke respondent's license and assess maximum statutory penalties against him is only buttressed by the fact that respondent has an extensive disciplinary history with this Board, which includes a prior instance where he entered a consent agreement with the Board and then failed to comply with the terms of his agreement. We thus note that, on January 22, 1997, Dr. Chen entered a Consent Order with the Board wherein he agreed to close down his medical office at 244 Broadway, Newark, New Jersey until such time that the Board determined that the medical office was suitable and fit for the resumption of the practice of medicine. The Order was based on findings made upon an inspection of respondent's office that respondent had maintained his office in a dirty condition, allowed insect infestation to occur, did not provide patients with paper gowns, did not change the paper covering on examination tables, kept syringes, medications and other equipment mixed together in an overflowing drawer, and did not provide waste containers in any of the examination rooms. See P-8. Respondent did not comply with the terms of the January 22, 1997 Order, and thereafter we entered an Order temporarily suspending his license on March 20, 1997, based on findings that he continued to practice, in squalid, unsafe and unsanitary conditions, from his office at 244 Broadway, Newark, New Jersey, notwithstanding his public agreement to discontinue practice from that office. P-9. The matter was ultimately resolved by way of Consent Order entered on August 21, 1997, pursuant to which respondent's license was suspended for two years and six months,

In addition to ordering the revocation of respondent's license, we conclude that respondent's conduct should be redressed by the assessment of significant civil penalties. Pursuant to N.J.S.A. 45:1-25, Dr. Chen may be subject to the assessment of civil penalties of not more than \$20,000 for each violation found (given that prior actions have been taken against Dr. Chen, Dr. Chen is subject to the higher penalty assessments that are authorized for second and subsequent violations). In this case, we have determined that respondent should be assessed a penalty of \$20,000 for each count of the complaint, for an aggregate penalty of \$120,000.

Finally, we deem it entirely appropriate and supported on this record to assess Dr. Chen with all costs that were incurred by the Board to investigate his practice, and the attorneys' fees that were incurred to bring this action to conclusion. In doing so, given respondent's default, we rely upon the certifications submitted by the Enforcement Bureau and the Attorney General's office respectively detailing the hours expended on the

---

the first six months of which were to be active. The order additionally imposed a series of additional conditions and limitations on respondent's continued practice, and included assessments of \$7500 in civil penalties and \$13,279.44 in investigative costs. P-10.

Finally, we note that respondent's license was also suspended for three years (one year of which was an active period of suspension and the remainder stayed) commencing April 13, 1984, and respondent was fined \$5,000, based on findings that he engaged in repeated acts of negligence. P-6, P-7.

investigation and subsequent prosecution of this matter. See P-24, P-25 and P-26. We point out that we find the aggregate amounts of investigative costs (\$13,380.41) and attorneys' fees (\$15,912.50) in this matter to be reasonable, particularly given the manifest import of this matter and the compelling public interest in pursuing this action.

WHEREFORE it is on this 12<sup>th</sup> day of April, 2006

ORDERED *nunc pro tunc* February 9, 2005:

1. The license of respondent Kenneth H. Chen, M.D., a/k/a Kuen Hai Chen, M.D., to practice medicine and surgery in the State of New Jersey is hereby revoked, effective February 9, 2005.

2. Respondent is assessed civil penalties in the amount of \$120,000, which sum shall be payable in full to the Board within ten days of the date of entry of this Order. In the event respondent fails to pay the sum owing as ordered herein, a Certificate of Debt shall be filed with the Superior Court in accordance with N.J.S.A. 45:1-24.

3. Respondent is assessed investigative costs in the amount of \$13,380.41, which sum shall be payable in full to the Board within fifteen days of the date of entry of this Order. In the event respondent fails to pay the sum owing as ordered herein, a Certificate of Debt shall be filed with the Superior Court in accordance with N.J.S.A. 45:1-24.



4. Respondent is assessed attorneys' fees in the amount of \$15,912.50, which sum shall be payable in full to the Board within fifteen days of the date of entry of this Order. In the event respondent fails to pay the sum owing as ordered herein, a Certificate of Debt shall be filed with the Superior Court in accordance with N.J.S.A. 45:1-24.

NEW JERSEY STATE  
BOARD OF MEDICAL EXAMINERS

By: Sindy Paul, MD  
Sindy Paul, M.D.  
Board President

## Appendix

### Documents introduced into Evidence

- P-1      Verified Complaint In the Matter of: Kenneth H. Chen, M.D., filed May 19, 2004.
- P-2      Interim Consent Order In the Matter of: Kenneth H. Chen, M.D., filed May 27, 2003.
- P-3      Order to Show Cause, Notice of Hearing and Notice to File Answer, In the Matter of Kenneth H. Chen, M.D., filed May 19, 2004.
- P-4      Interim Consent Order In the Matter of Kenneth H. Chen, M.D., filed May 25, 2004.
- P-5      Consent Order of Temporary Suspension of Licensure In the Matter of Kenneth H. Chen, M.D., filed June 11, 2004.
- P-6      Partial Summary Decision and Order In the Matter of Kenneth H. Chen, M.D., filed April 13, 1984.
- P-7      Consent Order In the Matter of Kenneth H. Chen, M.D., filed February 25, 1985.
- P-8      Interim Consent Order In the Matter of Kenneth H. Chen, M.D., filed January 22, 1997.
- P-9      Order Imposing Temporary Suspension of Licensure In the Matter of Kenneth H. Chen, M.D., filed March 20, 1997.
- P-10     Consent Order In the Matter of Kenneth H. Chen, M.D., filed August 21, 1997.
- P-11     Interim Consent Order In the Matter of Kenneth H. Chen, M.D., filed May 27, 2003.
- P-12     Letter from Nicholas Reuter, Center for Substance Abuse Treatment, Department of Health and Human Services to William V. Roeder, Executive Director, State Board of Medical Examiners, dated May 18, 2004.

- P-13 Affidavit of Cecilia Dominguez, Enforcement Bureau Investigator, dated May 3, 2004.
- P-14 Certified copy of medical record for "Cecilia Miraldo."
- P-15 Affidavit of Heather Ollendorf, Enforcement Bureau Investigator, dated May 5, 2004.
- P-16 Certified copy of medical record for "Heather Moore."
- P-17 Affidavit of Derrick Whitfield, Enforcement Bureau Investigator, dated May 6, 2004.
- P-18 Certified copy of medical record for "Derrek Watson."
- P-19 Affidavit of Joseph Trogani, Enforcement Bureau Investigator, dated May 11, 2004.
- P-20 Certified copy of medical record for "Joe Padilla."
- P-21 Affidavit of Cecilia Dominguez, Enforcement Bureau Investigator, dated May 11, 2004.
- P-22 Patient Sign in Sheet for Dr. Chen's Office.
- P-23 Affidavit of Charles Harris, Enforcement Bureau Investigator dated May 13, 2004.
- P-24 Certification of Costs of Michael J. Westenberger, Supervising investigator, Enforcement Bureau dated July 7, 2004.
- P-25 Division of Law Timekeeping Records for Matter Number 04-60427, Kenneth H. Chen, M.D.
- P-26 Directive from Jeffrey J. Miller, Director, Division of Law setting uniform rate of compensation for Legal Staff of the Division of Law, effective September 1, 1999.